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IN THE
Supreme Court of the United States
OCTOBER TERM, 1969

No. ~~7072~~

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AMALGAMATED ASSOCIATION OF STREET, ELECTRIC
RAILWAY AND MOTOR COACH EMPLOYEES OF
AMERICA, an International Labor Union; and
NORTHWEST DIVISION 1055 of the AMALGAMATED
ASSOCIATION OF STREET, ELECTRIC RAILWAY AND
MOTOR COACH EMPLOYEES OF AMERICA, a Region-
al Division of the International Union,

Petitioners,

v.

WILSON P. LOCKRIDGE,

Respondent.

**BRIEF IN OPPOSITION TO PETITION FOR WRIT
OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF IDAHO**

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PREFACE

Appendices to Petitioners' brief contain those portions of the record and pertinent laws to which Respondent will make reference in this brief. In the interest of brevity and to avoid duplication, Respondent's references herein to portions of the record below or pertinent laws will be to the appendices to the petition.

STATEMENT OF THE CASE

From May 16, 1943, to November 2, 1959, when the acts giving rise to this controversy occurred, Respondent had been a member of Northwest Division 1055 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America ("union") and employed as a bus driver by Western Greyhound or its predecessors.

Section 91 of the constitution of the union provides that all dues, fines and assessments are due on the 1st day of each month and must be paid by the 15th of the month in order to continue the member in good standing. It further provides that a member in arrears after the 15th day of the month is not in good standing and not entitled to certain benefits and where a member allows his arrearages to run over the last day of the second month without payment, he does thereby suspend himself from membership in the union. Section 91 additionally specifies that where agreement with employing companies provides that the members must be in continuous good financial standing, a member in arrears one month may be suspended from membership and removed from employment. The contract agreement pertinent to this case required that all employees covered by the contract become members of the association not later than 30 days following its effective date and thereafter remain members as a condition precedent to con-

tinued employment. It did not require the member be in good standing. (App. H - pp. 44a, 45a)

On or about November 2, 1959, the treasurer and financial secretary of Division 1055 of the union suspended Respondent from membership in the union on the *sole ground* that Respondent was in arrears in the payment of dues. One Elmer Day was likewise suspended. (App. G - p. 34a) At the time of such suspension from membership in the union, both Respondent and Day were in arrears in payment of their dues only from the 1st day of October, 1959. (App. G - p. 35a) The treasurer and financial secretary of Division 1055 notified the employer that Respondent and Elmer Day were no longer in good standing in the union and had suspended themselves from membership and accordingly requested they be removed from employment. This was done. (App. H - pp. 43a, 44a)

During the course of the litigation in the lower court Petitioners raised the defense that Respondent was in fact in arrears in his dues and subject to suspension from membership. The lower court ruled that Petitioners' interpretation of the union constitution and the employment contract was erroneous and that Respondent was not subject to suspension for nonpayment of dues until he was in arrears past the last day of the second month. (App. D - p. 22a) The interpretation and order of the trial court was not challenged by Petitioners as error on appeal to

the Idaho Supreme Court. (App. H - p. 50a) Only two other grounds were therefore raised on appeal: (1) Congress has pre-empted all state court jurisdiction over union-member relationships and (2) if the union was in error in its interpretation of the constitution and the employment contract, then in reality, Respondent was not suspended from the union for nonpayment of dues but must have been suspended for some other reason which constituted an unfair labor practice. (App. H - pp. 48a, 49a)

Elmer Day filed an unfair labor practice charge with the National Labor Relations Board but his petition was rejected by the Regional Director of the Board on the ground there was insufficient evidence of violation of the National Labor Relations Act. (App. H - p. 46a) It being obvious that Respondent would obtain no relief through the National Labor Relations Board, he filed an action against the union in state court, culminating in a second amended complaint upon which, with answer thereto, the case went to trial. (App. A - pp. 1a, 6a)

The trial court concluded that the acts of the union officers and agents in suspending Respondent from union membership were predicated *solely* upon his failure to tender periodic dues and ordered Respondent restored to union membership together with money damages represented by his loss of earnings. (App. G - pp. 40a, 41a) While Respondent sought relief on two counts, one sounding in

tort and the other for breach of contract (App. A - pp. 1a, 6a), judgment was awarded Respondent only for breach of contract (App. G - p. 40a) and the judgment was sustained on that basis. (App. H - p. 63a) Other damages sought by Respondent, in addition to loss of earnings, were denied as not being proper damages for breach of contract. (App. H - p. 63a)

ARGUMENT

I. THE DECISION BELOW IS NOT IN CONFLICT WITH THE PRE-EMPTION PRINCIPLE AND THE CONTROVERSY IS NOT SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE NATIONAL LABOR RELATIONS BOARD.

Petitioners charge that the Idaho Supreme Court has flung down the gauntlet to this court on pre-emption and has contumaciously assumed jurisdiction over union conduct which they assert is certainly either protected activity or an unfair labor practice. Acrimonious rhetoric notwithstanding, such is not the case.

“* * * Our decision in this case is designed solely to give ‘legal efficacy under state law to the rules prescribed by a labor organization for “retention of membership therein”.’ *International Assn. Machinists v. Gonzales*, 356 U.S. at page 620. The purpose for which we exercise jurisdiction is to avoid leaving ‘an unjustly ousted member without remedy for the restoration of his important union rights.’ ‘Such a

drastic result, on the remote possibility of some entanglement with the Board's enforcement of national policy, would require a more compelling indication of congressional will than can be found in the interstices of the Taft-Hartley Act.' *Gonzales*, 356 U.S. at page 620." (App. H - p. 53a)

The trial court found and concluded Respondent's suspension from union membership was predicated *solely* upon the ground of failure to tender periodic dues. No other premise was established. The treasurer and general manager of Division 1055, whose testimony was submitted through deposition, emphatically denied there was any other reason. Plainly and simply, the union interpreted the constitutional and contract provisions as requiring suspension when dues delinquency exceeded one month. The lower court interpreted these same provisions as requiring suspension only when the arrearages exceeded two months. The Idaho Supreme Court recognized this as a correct interpretation and further pointed out that Petitioners did not raise this question on appeal. (App. H - p. 50a)

In his second amended complaint Respondent sought damages and equitable relief and while his prayer for equitable relief was framed in general terms, the court below determined that the *primary* relief which should be granted to Respondent was restoration of his union membership and that dam-

ages were of secondary consideration. (App. H - pp. 52a, 53a) The court further concluded that the National Labor Relations Board could not give Respondent the relief obtainable under Idaho law (i.e. restoration of union membership, citing *Gonzales*). (App. H - p. 53a)

Since Respondent's suspension from union membership was predicated on the *sole* ground of non-payment of periodic dues and since restoration of union membership was the primary relief granted by the Idaho court, hasn't the state court here really dealt with arbitrariness and misconduct vis-a-vis the individual member and the union and hasn't the principal relief granted been restoration of union membership rights?

Total pre-emption has not been intended by Congress and that fact has been recognized by this court.

"The possibility of conflict from the court's award of damages in the present case is no greater than from its order that respondent be restored to membership. In either case the potential conflict is too contingent, too remotely related to the public interest expressed in the Taft-Hartley Act, to justify depriving state courts of jurisdiction to vindicate the personal rights of an ousted union member. This is emphasized by the fact that the subject matter of

the litigation in the present case, as the parties and the court conceived it, was the breach of a contract governing the relations between Respondent and his unions. The suit did not purport to remedy or regulate union conduct on the ground that it was designed to bring about employer discrimination against an employee, the evil the Board is concerned to strike at as an unfair labor practice under § 8(b)(2). This important distinction between the purposes of federal and state regulation has been aptly described: 'Although even these state court decisions may lead to possible conflict between the federal labor board and state courts they do not present potentialities of conflicts in kind or degree which require a hands-off directive to the states. *A state court decision requiring restoration of membership requires consideration of and judgment upon matters wholly outside the scope of the National Labor Relations Board's determination with reference to employer discrimination after union ouster from membership.* The state court proceedings deal with arbitrariness and misconduct vis-a-vis the individual union members and the union; the Board proceeding, looking principally to the nexus between union action and employer discrimination, examines the ouster from membership in entirely different terms.' Isaacson, *Labor Relations Law: Federal versus State*

Jurisdiction, 42 A.B.A.J. 415, 483." (*International Assn. Machinists v. Gonzales*, 356 U.S. pages 621 through 623.) (Emphasis supplied)

" 'By the Taft-Hartley Act, Congress did not exhaust the full sweep of legislative power over industrial relations given by the Commerce Clause. Congress formulated a code whereby it outlawed some aspects of labor activities and left others free for the operation of economic forces. As to both categories, the areas that have been pre-empted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds. Obvious conflict, actual or potential, leads to easy judicial exclusion of state action. Such was the situation in *Garner v. Teamsters Union*, supra (346 U.S. 485, 74 S.Ct. 161, 98 L.Ed. 228). But as the opinion in that case recalled, the Labor Management Relations Act 'leaves much to the states, though Congress has refrained from telling us how much.' 346 U.S. at page 488, 74 S.Ct. at page 164. This penumbral area can be rendered progressively clear only by the course of litigation'." (*San Diego Building Trades Council vs. Garmon*, 359 U.S. at page 240.)

The Idaho Supreme Court recognized that the conduct involved in *Garmon* involved fundamental aspects of concerted action, the very heart of the

National Labor Policy over which regulatory power of the N.L.R.B. has never been questioned. In the instant case, however, the conduct centers on membership rights in the union, critical from an individual member's viewpoint but conduct excluded from the operation of the Act or of mere peripheral concern thereof. (App. H - p. 58a)

In the instant case the union did not attempt to coerce Respondent in the violation of any right guaranteed by Section 7 of the Act (App. I - p. 80a) nor does Respondent discern any violation of Section 8(a)(3) or 8(b)(1)(A). Petitioners however ingeniously assert that since their interpretation of the union constitution and employment contract was apparently in error and Respondent was not in truth sufficiently in arrears in his membership dues to warrant suspension, he must have been suspended on some grounds other than failure to tender periodic dues and therefore the union conduct falls outside of the exemption provided by 8(b)(2) of the Act and constitutes an unfair labor practice. It might be noted in passing that throughout the trial of the case Petitioners contended that their interpretation of the rules was proper and a retreat from this position and the contention that an unfair labor practice had been committed was raised for the first time on appeal to the Idaho Supreme Court. The mere fact that Petitioners erred in their interpretation of the constitution does not alter the clear

and undisputed fact that failure to pay dues was the *sole ground* for the suspension.

II. BORDEN AND PERKO ARE DISTINGUISHABLE ON THEIR FACTS AND NOT DECISIVE OF THE ISSUE IN THIS CASE.

Petitioners assert that *Plumbers Union vs. Borden*, 373 U.S. 690 and *Iron Workers vs. Perko*, 373 U.S. 701 are in conflict with the decision below. While admittedly, in *Borden* and *Perko*, this court appeared (though not without dissent) to be extending the pre-emption doctrine to its very outer limits, neither *Borden* nor *Perko* is persuasive here because both are readily distinguishable on facts and the majority opinion specifically recognized that the situations prevailing therein were different than those in *Gonzales*.

Neither *Borden* nor *Perko* was suspended from union membership and restoration of this paramount right was not involved in the relief granted by the state court.

In both *Borden* and *Perko* the crux of the controversy concerned interference with employment relations and was not directed to internal union matters (373 U.S. at 705). While those decisions appear to go one step further, they nevertheless are in keeping with *Garmon*.

Here, the crux of the controversy concerned internal union matters—union membership. The em-

ployment relationship was merely incidental, the loss of employment following only as an incident to the primary act — suspension from union membership for nonpayment of dues. Moreover, as emphasized by the Idaho Supreme Court, *Borden* involved “difficult and complex problems inherent in the operation of union hiring rules” while *Perko* presented “difficult problems of definition of status and coercion * * * of a kind most wisely entrusted initially to the agency charged with day to day administration of the Act as a whole.” (App. H - p. 59a)

We are not here concerned with union action and employment discrimination. The primary concern is union conduct vis-a-vis a member and the union.

The Taft-Hartley Act is intended to promote commerce by attempting to insure industrial peace between employers and labor while protecting collective bargaining. It is not its purpose to regulate internal union matters (29 U.S.C.A. § 151) and in *Gonzales and Garmon* this court recognized that federal legislation has not pre-empted the field of controversy that exists between a member and his union arising from his rights predicated upon his status as a union member. Only when the exercise of state power over a particular area of activity threatens interference with the clearly indicated policy of industrial relations is it judicially necessary to preclude the states from acting.

“* * * However, due regard for the presup-

positions of our embracing federal system, including the principle of diffusion of power not as a matter of doctrinaire localism but as a promoter of democracy, has required us not to find withdrawal from the States of power to regulate where the activity regulated was a merely peripheral concern of the Labor Management Relations Act. See *International Ass'n of Machinists v. Gonzales*, 356 U.S. 617, 78 S. Ct. 923, 2 L.Ed. 2d 1018. * * *” (*San Diego Building Trades Council vs. Garmon*, *supra*)

Thus, we have here a situation where the union member was suspended from membership on the *sole ground* of nonpayment of dues. That this activity resulted in loss of employment is of mere peripheral concern to the Taft-Hartley Act. The subject of the action was the breach of a contract governing the relations between Respondent and his union.

This court has continued to recognize Congressionally carved exceptions to the pre-emption doctrine as well as refusing to hold state remedies pre-empted where the activity regulated was a mere peripheral concern of the Taft-Hartley Act (*Vaca v. Sipes*, 386 U.S. 171).

III. THE DECISION BELOW IS NOT IN CONFLICT WITH THE DECISION OF THE OREGON SUPREME COURT.

Following refusal of the National Labor Relations

Board to issue a complaint on the petition of Elmer Day (App. H - p. 46a), Elmer Day filed suit in the Oregon state courts and was awarded a judgment which was reversed on appeal. It clearly appears however, from the reported decision (*Day vs. Northwest Division* 1055, 389 Pac. 2d 42), that Elmer Day was able to prove, that to him at least, there was something more than a suspension for mere failure to pay dues and there was a specific finding of discrimination on the part of the union. As recognized by the Idaho Supreme Court (App. H - p. 59a) a finding of an unfair labor practice under such circumstances could well be established but in the instant case there was no such proof, no such conclusion and the finding by the Idaho trial court that the *sole* cause of suspension was failure to tender periodic dues is amply supported by the evidence.

“* * * this case has been submitted and tried on the interpretation of the contract, not on a theory of discrimination.” (App. H - p. 59a)

IV. IF THE STATE COURT HAS NO JURISDICTION, RESPONDENT HAS NO REMEDY IN ANY FORUM.

The Idaho Supreme Court emphasizes that if it did not assert jurisdiction in this case Respondent would never again regain his union membership. (App. H - p. 58a) The N.L.R.B. found no federal violation upon the petition of Elmer Day. (App. H - p. 46a) A charge was placed before the Board

and the Board refused to proceed. If the Board did not refuse to issue a complaint because it felt the union's act did not violate the law (i.e., suspension was for nonpayment of dues) then it must have refused to proceed on the basis that the union activity did not have a sufficiently substantial effect on commerce to warrant the exercise of the Board's jurisdiction or was not even "arguably" protected or prohibited activity.

This court has held that certain state actions (not involving suspension for failure to pay dues) were untenable since the acts complained of might "arguably" be prohibited or protected under the Act and this determination should be made before the Board. However, where a charge has been placed before the Board and the Board refuses to proceed, this should dispose of any question as to what the Board might do.

True, Respondent did not file a charge with the N.L.R.B. but Day did, complaining that he had been suspended on the grounds of failure to pay dues when in fact he was not so in arrears in his dues as to warrant such suspension. It is abundantly clear that had Respondent proceeded before the Board as did Day, his charge would have been similarly rejected. This being the case, without a right to proceed in the state court, Respondent would be denied his membership in the union with no remedy.

whatsoever for the restoration of that important right. In the eyes of the law and the embracing arms of justice, such a result cannot be countenanced.

CONCLUSION

Since the acts of the union in suspending Respondent from membership were predicated on the *sole ground* of nonpayment of dues, they do not constitute a violation of the Taft-Hartley Act. The conduct in the instant case involves internal union matters; a breach of contract governing the relations between Respondent and his union. The Petition for Writ of Certiorari should be denied.

Respectfully submitted.

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